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Attorneys for Defendants CURRENT  
ENERGY LLC and KEVIN ADAMS

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MIRYAM ABITBOL, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

CURRENT ENERGY LLC  
AND KEVIN ADAMS

Defendants.

Case No. 2:24-cv-08132-FLA-BFM

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO  
DISMISS PLAINTIFF'S  
COMPLAINT PER FEDERAL  
RULE OF CIVIL PROCEDURE  
12(b)(6)**

**Hearing**

**Date: January 31, 2025**

**Time: 1:30 PM**

**Courtroom: 6B**

**Hon Fernando L. Aenlle-Rocha**

**Complaint Served: Sept 26, 2024**

**Trial Date: None Set**

**TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES,  
AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on Friday, January 31st, 2025, at 1:30 p.m.

or as soon thereafter as the matter may be heard in courtroom 6B of the above entitled court, located at 350 W 1st Street, 6th Floor, Los Angeles, California 90012, before the Honorable Fernando L. Aenlle-Rocha of the United States District Court for the Central District of California, Defendants, Current Energy LLC and Kevin Adams, will, and hereby do, move the Court to dismiss the claims brought by Plaintiff, Miryam Abitbol, for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). This motion is made on the grounds that:

Plaintiff alleges that on August 6<sup>th</sup>, 2024, she received two unsolicited telemarketing calls made by Energy Efficient. Plaintiff alleges these calls came to her California residential phone number used for personal purposes, not associated with any business, and states that number has been listed on the National Do Not Call Registry since June 1, 2011. Plaintiff claims that during the first call, she requested not to be called again. Plaintiff alleges that after the request to cease calling, someone placed a second call to her during which she was transferred to Kevin Adams (“Adams”). Plaintiff alleges that, during this call, Adams held himself out as an employee of Current Energy (“CE”) and further communicated with her via text, again claiming to be an employee of CE. Plaintiff alleges these

1 calls violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, (“TCPA”)  
2 and that CE and Adams are liable for these calls. Plaintiff does not allege that CE  
3 or Adams directly made the calls. Plaintiff does not sufficiently allege or identify  
4 any basis for concluding that the callers are agents of CE or Adams and, therefore,  
5 Plaintiff has failed to state a claim upon which relief can be granted under Federal  
6 Rule of Civil Procedure 12(b)(6).  
7  
8

9 This motion is based on this notice, the accompanying Brief in Support, the  
10 records and pleadings on file in this matter, and any other evidence that may be  
11 presented to the Court at the time of the hearing.  
12

13 **Local Rule 7.3 Compliance.** This motion is made following the  
14 conference of counsel pursuant to Central District Local Rule 7-3, which occurred  
15 on October 25, 2024, during which counsel for the parties discussed the plaintiff’s  
16 claims and issues raised herein. Counsel for the defendants, Mr. Fitzpatrick, sent  
17 an email to Mr. Perrong dated November 7, 2024 inviting further discussion on the  
18 topics addressed during the October 25, 2024 teleconference: “Have you given any  
19 thought to my feedback re: Current Energy not directly placing the call? I would  
20 rather not bother with motion practice on that issue if we can avoid it. Happy to  
21 offer you a sworn statement to move the case in the direction it will ultimately  
22 move anyway” to which counsel did not receive a response.  
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1 Dated: December 24, 2024

Respectfully Submitted,

2 By: /s/ Michael A DiNardo

3 Michael A. DiNardo, Esq.

4 YK LAW LLP

5 John D Fitzpatrick, Esq. (PHV pending)

6 CUNNINGHAM DALMAN, P.C.

7 Attorneys for Defendants Current Energy,  
8 LLC and Kevin Adams

9  
10 **CERTIFICATE OF SERVICE**

11 I hereby certify that all counsel of record, who are deemed to have consented  
12 to electronic service are being served with a copy of this document via the Court's  
13 CM/ECF system. Any other counsel of record will be served by electronic mail,  
14 facsimile transmission and/or first-class mail on this same date.

15 /s/ Michael A. DiNardo

16 Michael A. DiNardo